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## THE CHANGES IN THE ALLEGIANCE AND LAWS OF COLONIAL NEW YORK.

### I. CHANGES IN ALLEGIANCE.

THE old Dutch Records of the City of New York present in curiously quaint and vivid form the legal formalities of three successive conquests of the territory which is to-day New York. These records, preserved for over two hundred years in manuscript, have only within the last five been put into a form accessible to the general public.<sup>1</sup> They begin with the year 1653 and record the transactions taking place before the Burgomasters and Schepens of New Amsterdam down to the year 1674. These officers were not only the executive and administrative head of the city but they were a court of general jurisdiction for the trial of both criminal and civil causes. In a more extensive way this court exercised over the territory within its jurisdiction much the same legislative and judicial functions as did the early Great and General Court in Massachusetts. Moreover through its Schout, or Sheriff, it proceeded directly not only to enforce its judgments and inflict the punishments it had decreed; but preserved order throughout the city and executed the treaties which the higher political powers had made.

Amongst the entries of licenses granted, records of pleadings and judgments, orders of the sheriff, decrees of divorce and the hundred and one other record entries of a busy court, we find the legal formalities of three changes of allegiance. In 1664 Dutch New Amsterdam became English "New Yorck." In 1673 the "Court of Mayor & Aldermen for the Citty of New Yorck" gave way in its turn to the Court of Burgomasters & Schepens of New Orange. Finally, in the following year (1674), the city again became the English New York.

In August of 1664 rumors of an English invasion had become so persistent in New Amsterdam that at the meeting of August 25th they were formally considered by the assembled Burgomasters and Schepens. The Court passed four resolutions:—

"At this conjuncture of time and current rumors, the Board in actual session, decrees and resolves:—First, that one third of the

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<sup>1</sup> "The Records of New Amsterdam from 1653 to 1674 Anno Domini" published by the City of New York. 7 vols. 1897.

inhabitants as Burghers of this City, without any exception shall appear in person or put another in his place furnished with a shovel, spade or wheel-barrow, to labour every third day at the City's works, on a penalty of six guilders.

2. That the guard shall be kept and a whole company paraded which shall commence this day and that the drum shall be beaten at five o'clock in the afternoon.

3. That every one who mounts guard shall receive one pound of powder and a pound and a half of lead.

4. That the brewers shall not malt any hard grain during eight days nor brew beer higher than twelve guilders the ton."

Further it was resolved:—

"To demand the following by form of petition from the Right Honorable Director General & Council:

Whereas we are of a certainty informed, that four frigates have arrived from Old England at Boston or thereabouts in N. England, provided with a considerable number of soldiers with intention as reports run, to attack and invade this place and the adjoining districts especially on Long Island, and are even now on the way to come here, which should the consequence thereof make itself manifest requires that this place be put in proper defence; Your Honors humble petitioners find themselves therefore necessitated to apply to your Honors requesting, that you should be pleased to favour this place with eight pieces of good and heavy cannon provided with their carriages, balls, swabs, brushes, picks and spoons which being granted, this place being then provided with a quantity of twenty-two pieces, they demand also for each piece fifty pounds of powder amounting to the quantity of eleven hundred pounds and ball in proportion, also six hundred pounds of lead for bullets, to be used by the Burghers for their muskets; and whereas it is to be feared that this place shall have to bear the first attack, before the fort be assaulted, therefore it is necessary to demand a greater number of people, than the Burghery can turn out, and as your petitioners have resolved, that a company of Burghers shall keep guard every night, they request that the same be strengthened at first by soldiers and the Company's servants, and that the day watch shall be kept by soldiers at both gates, and in case of being besieged or attacked by those, who seek to injure us, that all the soldiers and Company's servants with the Burghery shall repair to this City's walls, it being considered that this place being lost the fort is not tenable or very little so; and if it hap-

pen that in skirmishing any Burghers should require powder, he shall have free access to the Company to be furnished there with powder, on which very fair and not less necessary request, they await Your Hon<sup>rs</sup> disposition and remain your Honours' faithful subjects, Schout, Burgomasters and Schepens of the City afore-said : — Jonnes Nevius, Secretary."

On the following day the answer was received : —

"The proper fortifying of this place is not only granted to the petitioners for this time, but also earnestly recommended ; which that it may be most speedily affected, the Director General and Council have already thereunto distributed the aid of the Hon<sup>ble</sup> Comp<sup>ys</sup> negroes, and this day the assistance of a corporal's guard of soldiers ; we shall assist with all possible might and means. What regards the request for some fit and heavy guns in addition to the fourteen pieces previously delivered to the City, six pieces additional are allowed with suitable powder and ball requisite, and necessary thereunto, to wit., one thousand pounds of powder and six hundred pounds of lead. As to the required aid of the Comp<sup>ys</sup> Military to assist with the Burghery to defend the City, the D<sup>r</sup> General and Council consider it to be absolutely necessary and also promise to do to the utmost ; suitable orders shall, in this conjuncture be issued therefor ; and it is provisionally allowed that one half the number of people shall watch by night with the Burghery and attend to the day watch at the City gates, so long as the Burghery work."

On the 16th of September, ten days after the surrender to the English, the Court feels called upon to explain the important events which have transpired. It resolves to write the following to the Lord Directors : —

"RIGHT HONORABLE PRUDENT LORDS, THE LORDS DIRECTORS OF THE HONORABLE WEST INDIA COMPANY, DEPARTMENT OF AMSTERDAM.

Right Honorable Lords,

We, your Hon<sup>rs</sup> loyal, sorrowful and desolate subjects, cannot neglect nor keep from relating the event, which thro' God's pleasure thus unexpectedly happened to us in consequence of your Honor's neglect and forgetfulness of your promise — to wit, the arrival here of late of four Kings' frigates from England, sent hither by his Majesty and his brother, the Duke of York, with commission to reduce not only this place, but also the whole N.

Netherland under his Majesty's authority, whereunto they brought with them a large body of soldiers, provided with considerable ammunition. On board one of the frigates were about four hundred and fifty as well soldiers as seamen, and others in proportion.

The frigates being come together in front of Najac in the Bay, Richard Nicolls, the admiral, who is ruling here at present as Gouverneur, sent a letter to our Director General, communicating therein the cause of his coming and his wish. On this unexpected letter the General sent for us to determine, what was to be done herein. Whereupon it was resolved and decided to send some Commissioners thither, to argue the matter with the General and his three Commissioners, who were so sent for this purpose twice, but received no answer, than that they were not come here to dispute about it, but to execute their order and commission without fail either peaceable or by force, and if we had anything to dispute about it, it must be done with his Majesty of England, as we could do nothing here in the premises. Three days' delay was demanded for consultation ; that was duly allowed. But meanwhile they were not idle ; they approached with their four frigates, two of which passed in front of the Fort, the other anchored about Nooten Island and with five companies of soldiers encamped themselves at the Ferry, opposite this place, together with a newly raised Company of horse and a party of new soldiers, both from the North and from Long Island, mostly all our deadly enemies, who expected nothing else but pillage, plunder and bloodshed, as men could perceive by their cursing and talking when mention was made of a capitulation.

Finally, being then surrounded, we saw little means of deliverance ; we resolved what ought to be here done, and after we had well enquired into our strength and had found it to be full fifteen hundred souls strong in this place, but of whom not two hundred and fifty men are capable of bearing arms exclusive of the soldiers, who were about one hundred and fifty strong, wholly unprovided with powder both in the City and in the fort ; yea, not more than six hundred pounds were found in the fort besides seven hundred pounds unserviceable. Also because the farmers, the third man of whom was called out, refused, we with the greater portion of the inhabitants considered it necessary to remonstrate with our Director General and Council, that their Honors might consent to a Capitulation, whereunto we laboured according to our duty and had much trouble ; laid down and considered all the difficulties, which should arise from our not being able to resist such an enemy, as they

besides could receive a much greater force than they had under their command.

The Director General and Council at length consented thereunto, whereto Commissioners were sent to the Admiral, who notified him that it was resolved to come to terms in order to prevent the shedding of blood, if a good agreement could be concluded.

Six persons were commissioned on each side for this purpose to treat on this matter, as they have done and concluded in manner as appears by the articles annexed. How that will result time shall tell.

Meanwhile since we have no longer to depend on your Honours' promises of protection, we, with all the poor, sorrowing and abandoned Commonalty here must fly for refuge to the Almighty God, not doubting but He will stand by us in this sorely afflicting conjuncture and no more depart from us ; And we remain Your sorrowful and abandoned subjects.

PIETER TONNEMAN

PAULUS LEENDERZEN VAN DER GRIFT

CONELIS STEENWYSCK

JACOB BACKER

TYMOTHEUS GABRY

ISAACK GREVENRAAT

NICOLAAS DE MYER

Done in Jorck heretofore named Amsterdam in New Netherland A 1664 the 16th September."

The Articles of Surrender had not only guaranteed liberty and property to private subjects and the preservation of Dutch customs, but had expressly provided that "All inferior civil officers and magistrates shall continue as they now are (if they please)." For almost a month the old Burgomasters and Schepens continued to hold court and administer public affairs as unconcernedly as if Sir Richard Nicolls and his English followers had never succeeded to Director General Peter Stuyvesant.

"Friday, 14th October 1664 at one o'clock in the afternoon having been sent for, appeared at this City Hall Pieter Tonneman, Paulus Leenderzen van der Grift, Cornelis Steenwysck, Jacob Backer, Tymotheus Gabry, Isaack Grevenraat, Nicolas de Myer, Allard Anthony, Joannes de Piester, Jacob Kip, Jacques Cousseau, Isaack de Foreest, Jeronimus Ebbinck.

Burgomasters reported, Governour Richard Nicolls had the evening previous informed them, that he should appear in person

to administer the oath and with that view Burgomasters should summon to this City Hall the Magistracy of this City and some of the principal inhabitants. After which Governour Nicolls appeared in person with his Secretary at this City Hall, enquiring where Petrus Stuyvesant, Secretary Van Ruyven and the preachers were? It was thereunto answered, it was not known that they should be sent for. To which the Governour Nicolls said, that they should be sent for. Who being invited they immediately came.

The Governour Nicolls requests of the present assembly to take the following oath :—

‘I swear by the name of Almighty God that I will be a true subject to the king of Great Britain and will obey all such commands as I shall receive from his majestie, his Royall Highnesse James duke of Yorck and such governours, and Officers as from time to time are appointed over me by his Authority and none other whilst I live in any of his majesties territories. So help me God.’

The preceding oath being read to the meeting by Governour Nicolls divers debates occurred thereupon by some of the assembly. Finally all in the meeting roundly declared that they could not take such oath, unless Mr. Nicolls should please to add to the said oath—CONFORMABLE TO THE ARTICLES CONCLUDED ON THE SURRENDER OF THIS PLACE as they feared by taking such oath they might nullify or render void the articles.

Then D<sup>r</sup> Megapolensius<sup>1</sup> and Secretary van Ruyven stated that they saw no impediments to taking such oath. Nevertheless divers words occurred over and hither thereupon; after which Governour Richard Nicolls finally departed with his secretary from the meeting. The assembly also then adjourned.

On the Tuesday following the Burgomasters went with the Treasurer's book of the City accounts to Governour Richard Nicolls, and placed the same in his hands together with the bond granted to the City by the late Director General and Council. After which divers debates arose on both sides in presence of Col. Cartwright and Mr. Thomas Willet regarding the oath, and then the Governor said, that the Commonalty were greatly distracted by some. Burgomasters then declared, that they had no knowledge thereof and persisted again that they could not take the oath before and until it was thereunto added—CONFORMABLE

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<sup>1</sup> Dr. Megapolensius was the leading minister of the colony.

TO THE ARTICLES CONCLUDED AT THE SURRENDER OF THIS PLACE. Whereupon the Governour exhibited and delivered to the Burgomasters the following writing :—

‘Whereas there is a false and injurious aspersion cast upon the Oath of Obedience to his Ma<sup>ties</sup> his Royall Highness the duke of Jorck and the Governo<sup>r</sup> and Officers appointed by his Majesty Authoriti, and that some persons have maliciously sought to distract the minds of the inhabitants of New Jorcke by suggesting that the Artycles of peace so late and solemnly made, signed, and sealed were intended by that Oath to be made Null and of none effect, to the end that such wicked practices may not take the effect for w<sup>ch</sup> they are designed and that all now under his Ma<sup>ties</sup> obedience as denizenz of his towne may be undeceived and not give any longer credit to the disturbers of the peace of this Government, I doe thinke fitt to declare that the Articles of Surrender are not in the last broken or intended to be broken by any words or expressions on the said Oath, and if any person or persons here after shall presume to give any other construction of the joind Oath then is herein declared I, schal accompt him or them disturbers of the peace of his Ma<sup>ties</sup> subjects and procede accordingly, I doe further appoint and order that this declarond bee forthwith read, to all the Inhabitants and Registred ; as also that every denizen under my Government doe take the said capital oath who intend to remane here under His Ma<sup>ties</sup> Obedience. Given under my hand this eighteenth day of October in the yeare of our Lord God 1664 ; was signed Richards Nicolls.’

20th October 1664. In this City-hall assembled Piter Tonne-man, Paulus Leenderts van der Grift, Cornelis Steenwyck, Tymotheus Gabry, Isaack Grevenraat, Nicolaas de Meyer, Allard Anthony Joannes van Brugh, Joannes de Peister, Hendrick Janzen vander Vin, Jacob Kip, Hendrick Kip, The Elder, Jacques Cousseau, Jeronimus Ebbinck, Govert Loockermans, Isaack de Foreest, Jan Vinge.

The proceedings which took place as well on the 14th October as afterwards, and the writing of Governour Nicolls being read to the meeting, it was asked whether the aforesaid oath could not be taken, inasmuch as Mr. Nicolls stated in writing, that the articles of the surrender of this place are not broken in the least nor intended to be broken? Whereupon it was universally resolved in the affirmative, provided the above named Governour Nicolls shall



seal his given writing. Then Mr. Tonneman says, he cannot give his advice thereupon as he intends to depart for Holland with the ship lying ready to sail.

Tuesday 22nd November. In the afternoon at the City Hall. Present the Schout, Burgomasters and Schepens, as well in office as Old, except Allard Anthony and Jacob Kip.

The Assembly being formed as A Common Council is informed by the President for what purpose the meeting is called — to wit whereas the Officer Pieter Tonneman has acquainted the Burgomasters and Schepens that he intends to depart with the ship *the Eendracht* lying ready to sail, and therefore requests that another may be chosen in his place, therefore they are to nominate three or four persons, which being done Allard Anthony is chosen as Officer of this City in place of Pieter Tonneman by plurality of votes and with the approbation of the Hon<sup>ble</sup> Governour Nicolls.

Copy of letter written to His Royal Highness James Duke of York, by the Grace of God our most Gracious Lord, Health!

It has pleased God to bring us under your R. H.'s obedience wherein we promise to conduct ourselves as good subjects are bound to do, deeming ourselves fortunate that his Highness has provided us with so gentle, wise and intelligent a gentleman as Governor as the Hon<sup>ble</sup> Colonell Nicolls, confident and assured that under the wings of this valiant gentleman we shall bloom and grow like the Cedar on Lebanon, especially because we are assured of his Royal Highness' excellent graciousness, for his subjects and people.

The Schout, Burgomasters and Schepens of this City of New Yorck of the Island of Manhattan, Your Royal Highness faithful subjects and humble liegemen hereby request, that his Highness would be pleased to benefit and favor this place with the same rights and privilege, that his Majesty our King and most Gracious Lord is conferring on all his subjects in England; that is that ships of all nations may come and bring into England the products of their own country and may sail thence thereunto back again free and without impost on condition of paying the King's duty. But inasmuch as this place has been some years impoverished by onerous recognitions, which we have been heretofore, obliged to pay, We therefore, thro' regard for this our Commonalty and the prosperity of his Highness', our Most Gracious Lord's lands in this Province, and not only for our, your Highness' humble loyal subjects eternal praise, but also as a general renown for his Royal

Highness throughout all Christendom, pray that no more be paid here for five or six years than ships and goods pay, which come from other places out of England, or even from England to Boston or any places in New England or else go to their own countries, which being so long free of all burthens or at least paying but few, we doubt not but his Royal Highness will at the close of these years learn with hearty delight the advancement of this province even to a place from which your Highness shall come to derive great revenues, being then peopled with thousands of families and great trade by sea from New England and other places out of Europe, Africa or America. And in order that everything may be taken in hand with greater pleasure, zeal and courage we respectfully request that all privileges and prerogatives, which his Royal Highness may please to grant this place in addition to those inserted and conditioned in the capitulation on the surrender of this place may be made known by letters Patent from his Royal Highness and his Majesty of Great Britain, our Lord, not only in the United Provinces, but also in France, Spain and other Hansa and Eastern places.

Praying then his Royal Highness to be pleased to take our interest and the welfare of this country into serious consideration; and if his Highness would please to vouchsafe to write a letter to us, his dutifull subjects he will oblige us more and more to pray for his Royal Highness, our most gracious Lord, that God the Lord may spare your H. in long continued health and prosperity. We are and remain your Royal Highness' dutifull subjects, Schout, Burgomasters and Schepens of this City. Cornelis Steenwyck; By order of the Wl. Schout, Burgomasters, and Schepens of this City aforesaid; Joannes Nevius Secrety. Done, New Yorck on Manhattans Island 1664, the 22nd November and was sealed with the Great Seal of this City impressed on Red Wax.

Thursday, 24th November 1664. In the City Hall, Present the Heeren Pieter Tonneman, Cornelis Steenwyck, Paulus Leenderzen van der Grift Tymotheus Gabry, Nicolaes de Meyer.

The President states, that with the approbation of the Honorable Governor Nicolls, he had written the preceding letter to his Royal Highness, Duke of Yorck, which he could not communicate to the meeting before as his Honor had it with his letter, which he had written to the same his Royal Highness. He therefore communicates it this day, asking their opinion thereof. Whereupon all answer, 'Tis Well.'"

New Amsterdam was now New York, and for nine years the loyal Dutchmen of New Netherlands remained the "faithful subjects and humble liegemen" of his Royal Highness the Duke of York. By slow degrees the Court of Burgomasters and Schepens became the English Court of Mayor and Aldermen.

But no sooner were the affairs of New York running smoothly in English fashion than again the Colony was called upon to change its allegiance and the Duke of York lost his loyal Dutch subjects. In 1672 war had been declared between England and Holland, and while their armies were battling for supremacy in the Netherlands, a Dutch fleet had been sent against the English colonies in America. This fleet, in 1673, succeeded in capturing New York.

On the 12th day of August, in that year, the Council of War summoned the Magistrates and the principal Burgher officers to a meeting and absolved them from their oaths previously taken to the English Government, "and further recommended them to do their duty, so that no disorder may be committed in this place, until the government and magistrates of this city be restored by the Admirals and Council of War."

No time was lost in abolishing the English municipal system and restoring the ancient Dutch institutions. Within a week the authorities were able to publish the following proclamation:—

"The Commanders and Honorable Council of war in the service of their High Mightinesses the Lords States General of the United Netherlands and His Serene Highness the Prince of Orange, etc. Health!

Whereas We have thought proper for the greater advantage and prosperity of this Our City of New Orange, newly restored to the obedience of their aforesaid High Mightinesses the Lords States General of the United Netherlands and his Serene Highness the Prince of Orange, to reduce the form of the Government of this City to the former character of Schout, Burgomasters and Schepens, as is in practice in all the cities of Our Fatherland, in order that justice may be distributed and administered to all good inhabitants without respect or regard for persons:—

We therefore, in virtue of our commission, in the name and on the behalf of the High and Mighty Lords States General of the United Netherlands and his Illustrious Highness the Prince of Orange have, from the nomination exhibited by the Commonalty, elected as Regents of this City for the time of one current year as follows:—

As Schout :

ANTHONY DE MILT.

As Burgomasters :

JOHANNIS VAN BRUGEN,

JOHANNIS DEPEYSTER,

EGIDIUS LUYCK.

As Schepens :

WYLLEM BEECKMAN,

JERONYMUS EBBYNG,

JACOB KIPP,

LOUWERENS VAN DER SPIEGEL,

GELEYN VERPLANCK.

Which aforementioned Schout, Burgomasters and Schepens are hereby authorized and empowered to govern the inhabitants of this City, as well as Burghers and strangers, in conformity to the laws and statutes of our Fatherland and to make such ordinances therefor, as they shall find for the advantage of this City and its inhabitants. And the inhabitants of this City are strictly ordered and charged to respect and honour the above named Regents in their respective qualities as all honest and faithful subjects are bound to do : Done Willem-Hendrick, ady this 17th August A. 1673.

JACOB BENCKES CORNELIS EVERSTEN the Younger

NICOLAES BOES A. COLVE

AP VAN TEYLL”

Following this in the record is the oath taken by the Magistrates :—

“We, Schout, Burgomasters and Schepens with the Secrety of the City of New Orange, qualified by the right puissant Council of War, promise and swear in the presence of Almighty God, that we, each in this our quality, shall according to the best of our knowledge pronounce good law and justice between parties in the cases brought before us, without any passion ; that we shall promote the welfare of this City maintain in all things the pure and true Christian Religion conformably to the Word of God and the order of the Synod of Dordrecht, as taught in the Church of Netherland ; obey maintain and assist to uphold in all things the high authority placed over us, or yet to be placed over us in the name of their Mightinesses the Lords States General of the United Netherlands and his Highness the Prince of Orange,

against all that may oppose it as much as lies in our power. So truly Help us God !”

The record then continues : —

“ 18th August, The Chosen Burgomasters and Schepens have further resolved to send the Schout and Burgomast Luyck to the Commanders, to confer with them on some necessary matters.

Returning this day they report, they were expressly charged by the Honorable Commanders, that the Magistrates should take care, that the Burghers of this City may be sworn forthwith ; likewise that the Mace, Gowns and City Seal of the late Mayor Jno. Lawrence be brought in together with the Constables’ staves and the colours and handed over to their Honors. Whereupon the late Mayor John Lawrence being sent for, the same is communicated to him, who also undertook to do it. They further report, that the Burgomasters shall succeed as Burgher Captains and that they with the Schepens are authorized to elect their Lietenants and Ensigns.

This date also a beginning is made to swear in the Burghers and inhabitants.

The late Mayor reappearing in Court delivers up his gown or cloak with the City Seal and Mace and the remainder of the gowns and Constables staves are in like manner brought and fetched into the fort by the express order of the Commanders, except the two Burgher flags, which remain with the Commanders’ consent, as Burgomaster van Brugh’s.”

This completes the formal taking over of the English territory by the Dutch, and the Court records again resume routine entries such as “ plaintiff demands three ankers of rum for sheep sold — The argument of parties being heard the Worshipful Court condemns the defendant to pay the said debt to plaintiff.”

This routine business of the court, however, was again interrupted before the year was ended by another change of allegiance, Without any preliminary introduction, and without any comment, under date of October 15, 1674, stands the entry : —

“ The Governor-General appearing in Court states, that he has now received by the National Ship the *Muyll Tromp* letters and absolute orders from the Majores and their High Mightinesses for the restitution of this Province of N. Netherland to his Majesty of Great Britain pursuant to the Treaty of Peace concluded on the . . . February last ; with further orders that he return home with the garrison as soon as possible, which his Honor resolved to

communicate to the Court ; informing them further, that if they had any representation to make to their High Mightiness, it would be willingly presented by his Honor etc. For which offer the W. Court hath thanked the Governor."

With undisturbed calm the Court returned to its usual business, and not only heard at length the reasons which the Curators of the estate of John Ryder advance for not paying the Vendue-master the arrears long overdue on a house and lot "in the Brouwer Straet," but passed on to other petty disputes as if no great affairs of state had ever troubled it. On October 30th, after the Court had disposed of some fifteen cases, the Honorable Governor General again appeared and recommended "the Burgomasters and Schepens and the Burgher Council of War most particularly to take good care for the prevention of all mischiefs either by night or by day, which may be occasioned by the malice of any persons and the insolence of his Honors soldiery ; further enjoining on them, that if any soldiers be found in the streets exhibiting insolence, that they should be secured and brought to his Honor, who then should punish them according to deserts, etc." Whereupon the Court passed resolutions for measures to prevent such "mischiefs" and adjourned.

The next day the "Burgomasters and Schepens with the Council of War being assembled at the City Hall have, with the approbation of the Governor, appointed and qualified, as their Worships do hereby appoint and qualify, Mr. Cornelis Steenwyck, with the Burgomaster Johannes van Brugh and Willem Beeckman to repair on board his Majesty's frigate now anchored under Staten Island and there to welcome the Governor Majr Andrews and at the same time to request some privileges for the advantage of the Commonalty.

The above delegates returning this day report that they had welcomed the Honorable Major Andrews on board, and had sought some privileges in favour of the inhabitants ; he answered them, they, the delegates, may insure the inhabitants of the Dutch nation, that they should participate in the same privileges with those of the English nation, and that his Honour should promote their interest as much as possible ; referring further to the instructions given him by his Royal Majesty and Highness of York."

Following this the records of the Court of Burgomasters and Schepens of New Orange are brought to an abrupt close by this entry :—

"At a Court present the Burgomasters and Schepens and Burgher Council of War, held and assembled by special order of the Governor General, Anthony Colve, in the City Hall of the City of N. Orange the 9th November Stilo Novo A. 1674.

The Governor General appearing in Court communicated to it that he should, pursuant to the orders from his superiors, deliver over tomorrow the Fort and this Province of N. Netherland according to the Articles of Peace to Major Andrews in behalf of his Majesty of Great Britain; and thanked the Court thereupon for their past services and at the same time absolved and discharged from their oath of allegiance to their High Mightinesses and his Serene Highness; further ordering, that the five flags of the Outside People with the cushions and table cloth now in the City Hall should be taken in charge by the Burgomaster Johannes van Brugh, until they should be demanded and taken away by order of the supreme authority, taken thereupon his departure from the Court. Which I certify to have so occurred,

EPHRAIM HERMAN, *Secretary*."

## II. CHANGES IN LAWS.

Although each change of allegiance in New York necessarily carried with it a more or less complete alteration of the judicial system, yet each time the conquering nation used such discretion in dealing with the existing conditions that in no instance was there an interruption of the administration of justice.

In 1664, when New Amsterdam was surrendered to the English, it was not regarded as the conquest of a foreign country. The legal advisers of Charles II. based the English title to this territory on the rights acquired by the discovery of the North American coast by the Cabots.<sup>1</sup> The Dutch settlers in New Amsterdam were regarded as mere usurpers, who "as private persons and without any authority from their superiors and against the law of nations, and the good intelligence, and alliance between us and their superiors, invaded and have since wrongfully obtained the same to the prejudice of our crown and dignity."<sup>2</sup>

While the Dutch were in actual possession of New Netherlands, in 1664, King Charles II. granted as part of the English territory unto his "Dearest brother James Duke of York his heirs and

<sup>1</sup> *Martin v. Waddell*, 16 Pet. 367 at 409; *Mortimer v. N. Y. El. Ry. Co.*, 6 N. Y. Sup. 898.

<sup>2</sup> Private instructions to the Commissioners, 3 Documents Relating to the Colonial History of N. Y. 57.

assigns" "that island or islands commonly called by the several name or names of Matowacks or Long Island situate lying and being towards the west of Cape Cod and Narrow Higansetts abutting upon the main land between the two rivers there called or known by the several names of Connecticut and Hudson River together also with the said river called Hudson River and all the land from the west side of Connecticut to the east side of Delaware Bay and also all those Islands called or known by the names of Martin's Vineyard, and Nantukes otherwise Nantucketts," and gave him full power and authority "to correct, punish, pardon, govern and rule all such subjects of us our Heirs and successors who may from time to time hereafter inhabit within the same according to such laws, orders, ordinances, directions and instruments as by our said Dearest brother or his assigns shall be established. — So always as the said statutes, ordinances and proceedings be not contrary to but as near as conveniently may be agreeable to the laws, statutes and governments of this Our Realm of England, and saving and reserving to us our Heirs and successors the receiving, hearing and determining of the appeals of all persons." He also provided that "it shall be lawful to and for our said Dearest Brother his heires and assigns," "to make, ordain and establish all manner of orders, laws, directions, instructions, forms, and ceremonies of government and magistracy fit and necessary for and concerning the Government of his territories and islands so always as the same be not contrary to the laws and statutes of this Our Realm of England but as near as may be agreeable thereunto."<sup>1</sup>

When, therefore, Sir Richard Nicoll took possession of New Netherlands it was merely considered as the assertion of authority by the Duke of York over British territory. By the fundamental principles of the common law, the laws of England were already in force in New York.<sup>2</sup> Theoretically, therefore, the English common law became operative the moment the English authorities were in control. Indeed, an eminent judge has said that the Royal charter to the Duke of York "absolutely deprived the Duke of the power of retaining the laws of the ancient Dutch settlers, and thereby the laws of England then in force *ipso facto* became those of the colony immediately upon the surrender of the Dutch."<sup>3</sup> As

<sup>1</sup> 3 Doc. Rel. Hist. N. Y. 295.

<sup>2</sup> *Blankard v. Galdy*, 2 Salk. 411; *Memo. of Aug. 9, 1722*, 2 P. Wms. 75; *Calvins Case*, 7 Rep. 17; *Advocate General v. Rame Surnomoye Dossee*, 2 Moore P. C. (N. S.) 22; *Bogardus v. Trinity Church*, 4 Page 178; *The Canal Appraisers v. The People*, 17 Wend. 571.

<sup>3</sup> *Chancellor Walworth in The Canal Appraisers v. The People*, 17 Wend. 571 at 587.



a matter of fact, however, as we have seen, the Dutch courts went on as if perfectly oblivious of the change of sovereignty.

No immediate attempt was made by the English to supersede the existing Dutch civil law.<sup>1</sup>

It was not until four months after the surrender that the first move in this direction was made. Governor Nicolls prepared a code of law and practice<sup>2</sup> and invited delegates chosen from the various towns to meet at the end of February at Hempstead. When they had met at the appointed place, without giving the delegates an opportunity for debate or discussion, he presented them with his "General Laws Hereafter to be Observed," which he forced them to adopt. Much more unwillingly than their language indicates the Code was accepted:—

"Wee the Deputies duely elected for ye severall townes upon L. Island being assembled at Hempsteed in a generall meeting by authority derived from your R. H<sup>s</sup> unto the Hon<sup>ble</sup> Collonel R. Nicolls as deputy Governour doe most humbly and thankfully acknowledge to y<sup>r</sup> R. H<sup>s</sup> the great honour and satisfaction wee receive in our dependance upon your Royall Highness according to the tenour of his sacred Maties Patent granted to Y<sup>r</sup> R. H<sup>s</sup> bearing date the 12 day of March 1664 in the 16th yeare of his Maties Raigne, wherein wee acknowledge ourselves, our heires and successors for ever to be comprized to all intents and purposes therein more at large exprest, and wee doe publikely and unanimously declare our cheerfull submission to all such Lawes, Statutes and Ordinances which are or shall be made by virtue of authority from Y<sup>r</sup> R. H<sup>s</sup> your heires and successors forever. . . . Wee being allready well assured that in soe doing wee performe our duty of allegiance to his Ma<sup>tie</sup> as free borne subjects of the Kingdome of England inhabiting in these his Maiesties dominions." <sup>3</sup>

Governor Nicoll's code, commonly known as the "Duke's Laws,"<sup>4</sup>

<sup>1</sup> Letter, Col. Cartwright to Sir R. Nicolls, 3 Doc. Rel. Col. Hist. N. Y. 87-8.

It must also be remembered that the Articles of Surrender guaranteed to the Dutch settlers their customs concerning inheritance, enjoyment of their property, and the disposal of the same at pleasure, the determination, according to Dutch manner of differences, of contracts and bargains made before the capitulation, and other similar rights.

<sup>2</sup> Judge Daly believes that the Code was prepared by Clarendon, then Lord Chancellor, and prints a note from Dr. O'Callaghan expressing a similar opinion. 1 E. D. Smith Rep. xxxx.

<sup>3</sup> 3 Doc. Rel. Col. Hist. N. Y. 91.

<sup>4</sup> "Lawes Establish't by the authority of his Majesties Letters patents, granted to his Royall Highness James Duke of Yorke and Albany: Bearing Date the 12th day of March in the 16th year of the Raigne of our Sovereigne Lord Kinge Charles the Second." 1 N. Y. Hist. Soc. Col. 305. 1 Colonial Laws of N. Y. 6.

was largely borrowed from the laws in practice in the other English colonies in New England.<sup>1</sup> Arranged in alphabetical order are all the details establishing and regulating the administration of justice and government. Three divisions of courts are established, the courts of Assizes, courts of Session, and the city and town courts. Each court has both civil and criminal jurisdiction. Judges, sheriffs, justices of the peace, juries, and arbitrators are all provided for. Land tenure, police regulations, provisions for religious liberty, and taxes are all explicitly set forth. There is almost no reference to the mode of procedure or to the then existing Dutch laws.

However, it was not until the following June that Sir Richard took the final step to overthrow the old Dutch system.

On Tuesday, June 13, 1665, "The Honble Heer Governour Nicolls appears in the Assembly who delivered to the Court the following writings after he had them read by the Clerk of the Secretary Nicolls:—

'Revocation of the FForme of Government of New Yorcke Under Y<sup>e</sup> Style of Burgomast<sup>rs</sup> and Schepens.

By vertue of his Maties Letters Pattents bearing date the 12th day of March in the 16th yeare of his Maties Reigne, Granted to his Royall Highness, James Duke of Yorke wherein full and absolute Power is given and Granted to his Royal Highnesse or his Deputyes, to Constitute, appoint, revoke and discharge, all Officers both Civill and Military, as also to alter & Change, all Names and Styles fformes or Ceremonyes of Government; To the end, that his Maties Royall pleasure may bee observed and for the more Orderly establishment, of his Maties Royall Authority, as near as may bee Agreeable to the Lawes and Customes of his Maties Realme of England; Upon mature deliveracon and advice, I have thought it necessary to Revoke and discharge, And by these presents in his Maties name, do Revoke and discharge the fforme and Ceremony of Government of this his Maties Towne of New Yorke, under the Name or Names, Style or Styles, of Scout Burgomasters and Schepens; As also, that for y<sup>e</sup> future Administracon of Justice, by the Lawes Establisht in these the Territoryes of his Royall Highnesse wherein the Welfare of all the Inhabitants and the Preservacon of all their due Rightes and Priviledges, Graunted by the Articles of this Towne, upon Surrender under his Maties obedience, are concluded; I do further declare, That by

<sup>1</sup> Order to put the Duke's Laws in force in N. Y., 3 Doc. Rel. Col. Hist. N. Y. 226.

a Particular Commission, Such Persons shall be Authorized to putt the Lawes in Execucon, in whose abilities, Prudence and good Affection to his Ma<sup>ties</sup> Service, and ye Peace and happynesse of this Governm<sup>t</sup>. I have especially reason to put Confidence, which persons so Constituted and appointed, shall bee Knowne and Called by y<sup>e</sup> Name and Style of MAYOR, ALDERMEN AND SHERRIFFE, according to the Custome of England in other his Ma<sup>ties</sup> Corporacons; Given under my hand and Seale, at ffort James in New Yorke, this 12th day of June 1665.

RICHARD NICOLLS.'"<sup>1</sup>

For nine years there was no interruption to routine administration of the Duke's Laws in New York. In 1673 the Dutch conquest naturally overthrew all the British institutions, and the "laws and statutes of our Fatherland" became again the law of the land in New York. The change of law was made as quickly and as quietly as the change of allegiance.<sup>2</sup> Indeed, there was so little friction caused by the shifting from the English to the Dutch system of jurisprudence that the Courts were in full discharge of their functions when, fourteen months after the Dutch succession,<sup>3</sup> Sir Edmund Andros returned to New York to restore the English régime. He had express instructions "to put in execution such lawes rules and ord'rs as you find have been established by Coll. Nicolls and Coll. Lovelace, and not to vary from them but upon emergent necessities . . .," and, "to continue ye courts of justice as they have been established and used hitherto."<sup>4</sup>

November ninth, 1674, Governor Andros by proclamation restored to New York the common law: "It is hereby further declared that the Known Books of Law's formerly estabisht and in force under his Royall Highnesse government is now again confirmed by his Royall Highnesse the which are to be observed

<sup>1</sup> 5 Records of New Amsterdam 248.

<sup>2</sup> As early as January, 1674, Anthony Colve, as Governor General, issued "Provisional Instructions for the Schout, Burgomasters and Schepens of the City of New Orange regulating the practice and procedure of the Court." This is frequently referred to as "Colve's Charter." 7 Records of New Amsterdam.

<sup>3</sup> The Treaty of Westminster, February 19, 1674, provided for the surrender of New York to the English by the Dutch.

<sup>4</sup> Instructions to Andros, 3 Doc. Rel. Col. Hist. N. Y. 218. Under date of August 6th an order had issued to Sir Edmund "to put the Dukes Laws in force in New York," "except such as shall have apparent inconveniences in them." 3 Doc. Rel. Col. Hist. N. Y. 226.

and practiced together with the manner and time of holding courts therein menconed as heretofore. And all magistrates and civill officers belonging thereunto to be chosen and estabisht accordingly." <sup>1</sup>

*Lee M. Friedman.*

BOSTON, MASS.

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<sup>1</sup> Proclamation of Gov. Andros, 3 Doc. Rel. Col. Hist. N. Y. 227.